IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1549 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA NANDALALBHAI PARIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1549 of 2004

MR YOGESH S LAKHANI for Petitioner No. 1

MR AD OZA LD. PUBLIC PROSECUTOR for Respondent No. 1

MR KG VAKHARIA Ld. Senior Counsel with

MS AVANI S MEHTA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 08/04/2004

ORAL JUDGEMENT

1. Rule. Mr.A.D.Oza, learned Public Prosecutor for respondent no.1 and Mr.K.G.Vakharia for respondent no.2 waive service of notice of rule.

2. The applicant came to be arrested on 25th April,2003 in connection with M.Case No.9 of 2002, being investigated by CID Crime (Anti Economic Cell, Gujarat State, Gandhinagar), for offences punishable under Sections 406, 409, 420, 467, 471 and 120(B) of the Indian Penal Code.

3. In order that the contentions raised before this Court by learned advocate for the applicant as well as the learned Public Prosecutor can be better appreciated, it would be appropriate to have reference to certain facts of the case.

3.1 The applicant - Rameshchandra Nandlalbhai Parikh took over as Chairman of the Madhavpura Mercantile Cooperative Bank Ltd. ("the MMCB" for short) somewhere in 1988. The MMCB is a Scheduled Bank having large number of branches and having commercial transactions with a sizable number of cooperative Banks besides its account holders. Unfortunately, the MMCB had to close down its commercial functioning on 2nd March,2001 because of financial difficulties which resulted into 'Rush' on several other cooperative Banks and even closure of certain banks because those banks had deposited money with MMCB. As a consequence of this, a writ petition in the nature of Public Interest Litigation came to be preferred before this Court wherein directions were given to examine and look into the "deeds and misdeeds" of present applicant as Chairman of the MMCB. Following that direction, an offence came to be registered against the applicant vide C.R.No.67 of 2001 with Madhavpura Police Station and the applicant came to be arrested on 1st March,2001. Soon thereafter, the applicant was detained under PASA on 7th May,2001. The said PASA order was quashed and set aside by this Court on 7th December,2001. During this period, the applicant got default bail somewhere in Agusut,2001 in respect of his arrest in C.R.No.67 of 2001. As a result, the applicant was set at large on 7th December,2001. During this time and even thereafter, a large number of complaints have been lodged regarding mismanagement of Bank, criminal breach of trust, cheating etc. against the applicant in respect of various accounts.

3.2 The present complaint came to be lodged on 19th June,2002 in respect of an account in the name of Amrita

Marketing Pvt. Ltd. wherein the Directors of that Company, the present applicant and Ex-Managing Director and C.E.O. of MMCB were shown as accused persons, and the applicant came to be arrested on 25th April,2003 in present case.

3.3 It would also be appropriate to note at this stage that the applicant is under arrest in respect of some other cases also.

3.4 Broadly, the allegations against the applicant are that he has not managed the Bank properly; has indulged in activities detrimental to the interest of the Bank and has siphoned public money for his personal benefit in various transactions. However, in the present case, the allegations against him is only of hatching conspiracy and permitting irregular operation of accounts against the rules, and to the detriment of interest of Bank and its depositors.

4. Learned advocate Mr.Lakhani appearing for the applicant has submitted that the Bank has chosen to lodge different complaints in respect of different accounts and transactions, and present application is in respect of only one of such transactions, for which a separate offence is registered. In the present case, except involvement of the applicant as a conspirator, there is no other allegation was made against him. Mr.Lakhani submitted that the borrowers viz. Directors of Amrita Marketing Pvt. Ltd. are enlarged on bail by this Court. They have also undertaken to repay the monies borrowed by them. Under the circumstances, no purpose would be served by detaining the applicant in jail further in respect of present offence. Mr.Lakhani submitted that the investigation papers clearly indicate that the irregularities in respect of present account, if any, were at the behest of or under the directions of Ex-Managing Director and C.E.O Mr.Pandya (Accused No.6) and the applicant had no role to play. Mr.Lakhani submitted that strategic move is adopted by the prosecution to lodge separate complaints and arrest the applicant sequentially so that the applicant remains in jail for a longer time.

4.1 Mr.Lakhani submitted that offences are triable by a Magisterial Court and the applicant is in jail for nearly about 1 year, even if his earlier period of pre-trial arrest is not considered. Mr.Lakhani also submitted that since the offence is triable by a Magisterial Court, maximum punishment can be 3 years and considering the work load in the Magisterial Court, the

trial is not likely to commence in near future.

4.2 Mr.Lakhani further submitted that the investigation has been made in respect of overall charge against the applicant of having mismanaged the Bank and in that offence, he has already been enlarged on bail, may be for want of filing of charge-sheet within time, but, factually he is enlarged on bail and therefore, no fruitful purpose is likely to be served by keeping the applicant in jail any further. Mr.Lakhani has drawn attention of this Court to statement of the Manager Mr.Vora recorded before the arrest of the applicant which does not implicate the applicant but, only indicates involvement of the Ex-Managing Director Mr.Pandya so far as the irregularities in respect of present Account is concerned. Mr.Lakhani also submitted that a deliberate attempt is made by the prosecution to defer the arrest and therefore, the applicant was arrested in respect of present complaint only on 25th April,2003 i.e. after about 10 months.

4.3 Last submission was that the applicant is aged person of about 70 years; he has undergone a by-pass surgery once; he belongs to a business class and has no criminal antecedents other than the complaints lodged in respect of the MMCB. He submitted that while the applicant was at large from 7th December,2001 to 25th April,2003, there are no allegations against him of any attempt having been made by him to tamper with the offence or to indulge into activities detrimental to the prosecution case. He, therefore, urged that the applicant may be granted bail on suitable terms and conditions.

5. The application is opposed to by learned Public Prosecutor Mr.A.D.Oza. He submitted that the applicant's involvement in the present case is as a conspirator. The applicant, being a Chairman of the Bank, was expected to look to the interest of the Bank and to ensure proper running of the Bank. Instead, he has indulged into activities which are detrimental to the interest of the Bank and has affected a large number of depositors. It has also affected the cooperative sector because of breaking down of several other cooperative banks also. Mr.Oza submitted that if statement of Mr.Vora and Mr.Chatursinh Anopsinh dated 30th April,2003 are considered, it is clear that the accounts wherein the applicant was interested were being run irregularly and this was known to the Ex-Managing Director Mr.Pandya. The applicant in order to facilitate continuance of such irregular accounts, connived at the irregularities

committed by Mr.Pandya. In the present account, irregularities are indicated to be ignored at the behest of Mr.Pandya. Mr.Oza therefore submitted that the applicant has failed in his duty as a Chairman of the Bank. Mr.Oza submitted that the applicant is connected with one Gujarat Kirana Pvt. Ltd. as well as Parikh Spices Product Pvt. Ltd. That on the day of closure of the Bank, an amount nearly of Rs.1,67,00,000/- was outstanding in the account of Gujarat Kirana Pvt. Ltd. and Rs.5,67,00,000/- in account of Parikh Spices Pvt. Ltd.

5.1 Mr.Oza also indicated that delay in arrest is a consequence of applicant's own action of challenging the lodgment of present complaint by preferring a petition to challenge the complaint on the ground that because earlier offence at C.R.No.67 of 2001 with Madhavpura Police Station was registered for overall mismanagement on part of the applicant, this case also would be covered thereunder and a stay was operating against investigation which was vacated only on 13th March,2003. Thereafter, the applicant came to be arrested when the investigation proceeded further. Mr.Oza submitted that the charge that prosecution is intentionally deferring in delaying the proceedings is thus not well founded.

5.2 Mr.Oza then submitted that this Court has considered cases of other accused, where involvement in similar transaction was considered. Therefore, while considering the case of the applicant also, his involvement in other cases may be taken into consideration. He submitted that applicant's action has resulted into closure of many cooperative banks. It has also affected many depositors in the evening of their lives depending on interest income and thereby, it has affected the society at large or public at large. Mr.Oza also submitted that the applicant has siphoned out bank money by granting over draft facility to one Mr.Ketan Parekh, who, in turn, passed over that money to the account of the applicant and who, in turn, used that money for speculation. This amount runs into several hundred crores. Mr.Oza submitted that although, this may not be part of the present charge-sheet, the Court may take this aspect into consideration while considering the question of bail of the applicant and the bail may be rejected.

6. Learned Senior Counsel Mr.Vakharia appearing for the Administrative Committee for Revival of the MMCB submitted that the action of the applicant can be equated with economic genocide. He relied upon the following

judgments and submitted that the present applicant may not be enlarged on bail :

(i) Narinderjit Singh Sahni and another Vs. Union of India and Others, AIR 2001 SC 3810.

(ii) Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748.

(iii) Mansab Ali Vs. Irsan and Another, AIR 2003 SC 707.

(iv) Mohammed Ali Pirbhai Dodhia Vs. State of Gujarat, 2003 (3) GLR 2267.

He submitted that the bail application may be rejected.

7. This Court has given consideration to the contentions raised before it by the learned counsel.

8. This Court is called upon to address itself to a question whether bail should be granted to the applicant, who was Chairman of the MMCB which failed because of mismanagement. For deciding this question, this Court will have to examine the overall back drop in which the development of breaking down of MMCB resulted.

8.1 It is worth a note that MMCB is a Scheduled Bank having numerous branches and having deposits from various quarters of society, starting from small depositors to cooperative banks, and large Institutions running in hundred of crores of rupees. As a necessary consequence, its closure has affected all its depositors including cooperative banks and a large number of citizens.

9. It has been vehemently contended on behalf of the applicant that a large number of complaints, about 70 in number, have been lodged against the applicant for various irregular accounts or various irregularities allegedly committed by or at the behest of or under connivance of the applicant and therefore, each case should be separately examined while considering the question of bail. The Court should examine this case only on the basis of the material forming part of charge-sheet and the Court should refrain from examining anything beyond the charge-sheet.

10. It is true that generally while considering the question of bail, the Court has to examine charge-sheet papers. But, while considering the question of bail, the Court is also required to examine various factors, like,

nature of accusation, evidence collected by the prosecution, character, behavior, antencendents and standing of the accused (Mansab Ali Vs. Irsan and Another, AIR 2003 SC 707).

11. With this proposition, if the facts of the present case are examined, it is no doubt clear that applicant's involvement in the transaction in question i.e. with Amrita Marketing Pvt. Ltd. is not directly indicated. However, statement of Mr.Vora and Mr.Chatursinh Anopsinh dated 30th April,2003 clearly indicate that the applicant used to oblige Ex-Managing Director Mr.Pandya by permitting him to run accounts irregularly, in which Mr.Pandya was interested because Mr.Pandya did not object to accounts being run irregularly in which the applicant was interested. This statement is assailed on the ground that in earlier statement, these witnesses do not say anything against the present applicant and it is only after the arrest of the applicant that they are trying to implicate the applicant. This contention, for being accepted, would call upon the Court to evaluate the evidence, which exercise cannot be undertaken by this Court at this stage of bail. These statements do, prima facie, indicate that the applicant was involved with Ex-Managing Director and C.E.O. in conniving at running of irregular accounts involving large amounts. The applicant as a Chairman of the Bank owed a greater duty of care and responsibility towards the running of the Bank in a regular manner as per Rules and it is, therefore, not a case of mere allegations of conspiracy, but, prima facie conspiracy is indicated from the investigating paper.

11.1 The applicant's contention that he has been granted bail in respect of C.R.No.67 of 2001 in respect of overall alleged mismanagement of the Bank and therefore, this case cannot be considered against him, is not possible to be accepted for the reason that this very applicant had approached this Court with a petition for a direction for recalling the order of investigation under Section 156(3) of the Cr.P.C., which has been withdrawn. The Civil Application before the Division Bench in the Public Interest Litigation is preferred which is pending before the Division Bench and therefore, this Court without expressing any opinion on this aspect, does not deem it proper to consider a factor in favour of the applicant for considering question of bail. Undisputedly, fact remains that when the Bank was closed, two accounts in which the applicant is interested through his relatives had an outstanding amount of roughly Rs.8 to Rs.9 crores.

11.2 This would be a relevant factor while considering the bail application of the applicant, who was Chairman of the Bank. Likewise, although not directly forming part of this charge-sheet while considering the character, antecedents and standing of the applicant, it has to be noted that as per statement made at the Bar by learned Public Prosecutor Mr.Oza, over draft facility granted to one Mr.Ketan Parekh for a very large amount was ultimately transferred to the account of present applicant and was allegedly used for speculation. Differently put, amount was used by applicant for a purpose other than for which over draft facility was given to Mr.Ketan Parekh.

12. It is indicated that the applicant has shown his readiness to transfer his credit balance to be credited to the debit balance in those accounts and for that purpose, cheque was also issued which was not accepted by the Bank, which has now been permitted to be done under the order of learned Chief Metropolitan Magistrate after hearing CBI and Bank, by an order dated 8th December,2003, in Criminal Misc. Application No.56 of 2003. In this regard, it may be observed that this is only in respect of part of the amount where applicant is directly involved and secondly, this subsequent conduct on part of applicant cannot change the complexion or seriousness of the action on the part of the applicant.

13. With the aforestated factual background let us see what the Apex Court in the case of Ram Narayan Poply Vs. CBI (Supra) has observed "the cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The community of the State is not a persona nongrata who cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in heat of moment upon patience being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters with view white collar crime with a permissive eye, unmindful of the damage done to the national economy and national interest. It is also to be born in mind that direct evidence in proof of conspiracy is seldom available. Offence of conspiracy can be proved by either direct or

circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy about the persons who took part in the formation of the conspiracy about the object which the objectors set before themselves as the object of conspiracy and about the manner in which the object of conspiracy is to be carried out. All this is necessarily a matter of inference."

14. Here, at this stage, this Court has to prima facie examine the material on record and as indicated, there is material on record to indicate involvement of the applicant in conspiracy. Public at large has lost hundred crores of rupees. The Committee appointed for revival of the Bank is struggling hard and facing difficulty in recovery of money and it is still a big question whether the Bank could survive, despite all these efforts. This is only a consequence of mismanagement of the MMCB of which the present applicant was Chairman and was expected to ensure proper running of the Bank wherein he is prima facie indicated to have failed for his personal benefit. It cannot be termed as a simple major offence of criminal breach of trust or cheating. This is something more than that where large number of victims are deprived of their bread and butter because of loss of their funds deposited with the Bank. The cooperative movement has also suffered a great set-back because of this happening.

14.1 With the above background of the matter, where the applicant as a Chairman is indicated to have indulged in such activities detrimental to the interest of the Bank and depositors, this Court is not inclined to exercise its discretionary jurisdiction and entertain this application.

15. Various petitions are lodged by the petitioners challenging the various actions, ultimately resulting into delay in action and an attempt is made to impress that there is delayed action on the part of the prosecution. This aspect would have a bearing on the "behavior" of the applicant. An eye has to be kept on possibility of prosecution being prejudiced when investigation in many other cases is yet not over, particularly when many of witnesses would be those who have worked under applicant or who may be under his obligation.

16. While considering bail application, Court has to give due importance to individual liberty as well as to the common public interest and has to strike a balance.

In the opinion of this Court with above factual scenario and background of the case, bail to the applicant, if granted, may out weigh common public interest, to which this Court need not and would not be an instrumentality.

17. In the opinion of this court, therefore, taking overall view of the matter, discretion is not required to be exercised in favour of the applicant by granted bail. Applicant must fail and stands rejected. Rule discharged.

(A.L.Dave,J.)

(vipul)